

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ALL RIGHT, TITLE AND INTEREST  
IN REAL PROPERTY LOCATED AT  
23 WEST 31<sup>ST</sup> STREET, NEW YORK,  
NEW YORK 10001, WITH ALL  
IMPROVEMENTS, APPURTENANCES, AND  
ATTACHMENTS THEREON.

Defendant in-rem.  
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CASE NO. 08-cv-3049

**VERIFIED ANSWER**

Claimants, F.R.J.D. CORP. and WENCESLAO MIRANDA, appear herein through their attorney, ROBERT M. SIMELS, ESQ., as and for their Verified Answer to the Verified Complaint for Forfeiture in Rem, filed on May 25, 2008, allege the following upon information and belief:

1. The claimants deny the allegations contained in paragraph 1 of the plaintiff's verified complaint.
2. The claimants deny every allegation in paragraph 2 of plaintiff's verified complaint, and refer all questions of law to this Honorable Court.
3. The claimants deny every allegation in paragraph 3 of plaintiff's verified complaint, and refer all questions of law to this Honorable Court.
4. Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 4 through 8.
5. Claimants admit the allegation in paragraph 9.
6. Claimants admit to the allegations in paragraph 10 that from at least 1997 to the present a

business that ships goods to place outside of the United States has occupied the defendant property, but deny the business name has been Miranda Travel Freight Forwards Corporation for the entire period of time. In 2003 Miranda Travel Freight Forwards Corporation was re-named JM Cargo Corporation.

7. Claimants admit to the allegations in paragraph 11 that Wenceslao Miranda a/k/a Juan Miranda is the Chief Executive Officer and that the address is that of the defendant property, but deny the business name is Miranda Travel Freight Forwards Corporation. In 2003 Miranda Travel Freight Forwards Corporation was re-named JM Cargo Corporation.
8. Claimants deny every allegation in paragraph 12 of the plaintiff's verified complaint.
9. Claimants deny every allegation in paragraph 13 of plaintiff's verified complaint.
10. Claimants deny every allegation in paragraph 14 of plaintiff's verified complaint.
11. Claimants deny every allegation in paragraph 15 of plaintiff's verified complaint.
12. Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16.
13. Claimants deny every allegation in paragraph 17 of the plaintiff's verified complaint.
14. Claimants deny every allegation in paragraph 18 of the plaintiff's verified complaint.
15. Claimants deny every allegation in paragraph 19 of the plaintiff's verified complaint.
16. Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20.
17. Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21, except admits Wenceslao Miranda was charged by a New York State grand jury.
18. Claimants admit every allegation in paragraph 22 of the plaintiff's verified complaint.

19. Claimants deny every allegation in paragraph 23 of the plaintiff's verified complaint.

20. Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 24 through 28.

21. Claimants deny every allegation in paragraph 29 of the plaintiff's verified complaint.

22. Claimants deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 30.

23. Claimants deny every allegation in paragraph 31 of the plaintiff's verified complaint.

In addition, the claimants raise the following numbered defenses to the government's forfeiture suit.

#### **FIRST DEFENSE**

24. The Plaintiff lacks probable cause for the institution of this forfeiture action.

#### **SECOND DEFENSE**

25. There is no sufficient nexus between Wenceslao Miranda's and F.R.J.D. Corp.'s property, the defendant-in-rem property, and any criminal offense.

#### **THIRD DEFENSE**

26. The action fails to establish that the defendant-in-rem property was used to commit or facilitate the commission of any criminal offense.

#### **FOURTH DEFENSE**

27. The court lacks in-rem jurisdiction over the property sought for forfeiture.

#### **FIFTH DEFENSE**

28. The forfeiture of the property claimed in this matter amounts to an additional and excessive penalty against Wenceslao Miranda and F.R.J.D. Corp. Accordingly, the relief sought by plaintiff is violative of Wenceslao Miranda's Eight Amendment rights to the United States

Constitution, to be free from excessive punishment and Fourth Amendment rights prohibiting unlawful seizure.

**SIXTH DEFENSE**

29. The action fails to establish that Wenceslao Miranda or F.R.J.D. Corp. committed any criminal activity as defined by applicable forfeiture statutes.

**SEVENTH DEFENSE**

30. The action fails to establish that there existed any "substantial connection" between the defendant-in-rem property and the commission of any criminal offense.

**EIGHTH DEFENSE**

31. The action fails to establish the requisite intent of Wenceslao Miranda or F.R.J.D. Corp. as required by law.

**NINTH DEFENSE**

32. The Claimant, F.R.J.D. Corp., has other beneficial owners of the shares of the corporation.
33. These beneficial owners have an equitable interest in the subject property, and did not know of the alleged conduct giving rise to the instant forfeiture.
34. At the time claimant F.R.J.D. Corp. and its other beneficial owners acquired interest in the subject property, they were "innocent owners" under 18 U.S.C. § 983(d) and their interest in the subject property should come within the exemption to forfeiture contained therein.

**TENTH DEFENSE**

35. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the answering claimants herein request that the Complaint be dismissed with prejudice on the grounds that the Complaint fails to state a claim upon which relief may be granted.

PLEASE TAKE NOTICE that the Claimants demand a trial by jury of the issues and defenses raised by their claims and answer.

**WHEREFORE**, the Claimants, F.R.J.D. Corp. and Wenceslao Miranda respectfully request that the Court:

- 1) Enter judgment on behalf of the claimants,
- 2) Dismiss the plaintiff's verified complaint with prejudice,
- 3) Award attorneys fees as provided under federal law, and
- 4) For such other and further relief as this Court may deem just and proper.

Dated: April 14, 2008  
New York, New York

A handwritten signature in black ink, appearing to read 'R. M. Simels', is written over a horizontal line.

Robert M. Simels, Esq. (RS0433)  
ROBERT M. SIMELS, P.C.  
*Attorneys for Claimants,*  
*F.R.J.D. CORP. and*  
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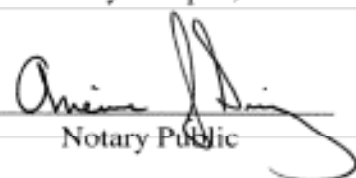
**VERIFICATION**


Wenceslao Miranda, being duly sworn, deposes and says: that he is the individual claimant and principal officer of the Corporate claimant and declares under penalty of perjury that the foregoing Verified Answer has been read and translated to him and that he knows the contents thereof; that the same is true to his own knowledge, and that as to those matters he believes them to be true.

Dated: April 14, 2008  
New York, New York

  
WENCESLAO MIRANDA

Sworn to before me  
this 14<sup>th</sup> day of April, 2008

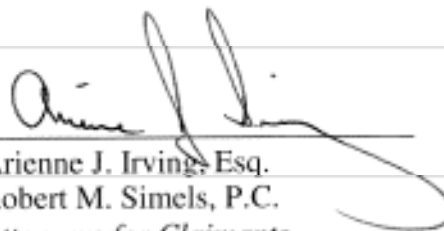
  
Notary Public

ARIENNE J. IRVING  
Notary Public State of New York  
No. 02186111557  
Qualified in New York County  
Commission Expires June 14, 2008 

**CERTIFICATE OF SERVICE**

I certify that on **April 14, 2008**, I mailed a true copy of the within, **VERIFIED ANSWER**, dated April 14, 2008 via Priority Mail in an official depository of the United States post office with appropriate postage, upon the following:

**Anna Elizabeth Arreola**  
U.S. Attorney's Office, SDNY  
One St. Andrew's Plaza  
New York, NY 10007

A handwritten signature in black ink, appearing to read 'Arienne J. Irving', is written over a horizontal line.

Arienne J. Irving, Esq.  
Robert M. Simels, P.C.  
*Attorneys for Claimants,*  
*F.R.J.D. CORP. and*  
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